Exhibit 15

In The Matter Of:

TAGNETICS, INC.

October 18, 2019

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UNITED STATES BANKRUPTCY COURT
SOUTHERN DISTRICT OF OHIO
WESTERN DIVISION AT DAYTON

IN RE:	*	Case No. 19-30822
TAGNETICS, INC.	*	October 18, 2019

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TRANSCRIPT OF HEARING
BEFORE THE HONORABLE GUY R. HUMPHREY
UNITED STATES BANKRUPTCY JUDGE

APPEARANCES:

STEPHEN B. STERN, ESQ.
ROBERT R. KRACHT, ESQ.
For Tagnetics, Inc.

KENNETH W. KAYSER
RONALD E. EARLEY
JONATHAN HAGER
Petitioning Creditors

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(Proceedings begin at 9:34 a.m.)

THE CLERK: The United States Bankruptcy Court for the Southern District of Ohio is now in session until adjournment this 18th day of October 2019, the Honorable Guy R. Humphrey presiding. You may be seated.

On the docket for this morning is Case Number 19-30822, Tagnetics, Incorporated. May the Court please have appearances, beginning with counsel for Tagnetics?

MR. STERN: Good morning, Your Honor. Stephen Stern on behalf of Tagnetics.

THE COURT: Good morning, Mr. Stern.

MR. KRACHT: Your Honor, Robert Kracht, from McCarthy Lebit, in Cleveland, Ohio counsel for Tagnetics.

THE COURT: Good morning, Mr. Kracht.

MR. KRACHT: Thank you.

THE CLERK: Gentlemen, each stand and state your full name for the record.

DR. KAYSER: My name is Kenneth Kayser.

THE COURT: Good morning, Mr. Kayser.

MR. EARLEY: Ronald Earley.

THE COURT: Good morning, Mr. Earley.

MR. HAGER: This is Jon Hager.

THE COURT: Good morning, Mr. Hager. Okay, I think we're here for the hearing, evidentiary hearing, on the motion to enforce settlement, filed by Tagnetics, and the response of the Petitioning Creditors, Mr. Kayser, Mr. Earley and Mr. Hager.

We reviewed everything extensively, I think, from that perspective. We're ready to go, but I think before we get started, I thought we would go over some preliminary matters, make sure we're all on the same page on everything. But before I get into my preliminary matters, are there any preliminary matters, which the parties wish to address with the Court?

MR. STERN: Your Honor, are we going to have the opportunity for a brief opening statement after the preliminary matters?

THE COURT: Oh, yes, yes.

MR. STERN: Then nothing at this time.

THE COURT: Absolutely. I just wanted to kind of lay the groundwork for everybody, particularly since we have pro se parties. I like to try to lay the groundwork as best as possible, so everybody understands as best as possible, you know, how hopefully things will operate during the course of the day today.

Anything you, the pro se Petitioning

Creditors, wish to raise with the Court at this time, before I get into my preliminary matters?

DR. KAYSER: No, sir.

MR. EARLEY: No, thanks.

THE COURT: All right. Since Tagnetics has filed a motion, we'll have Tagnetics -- after opening statements, we'll have Tagnetics present its case. They may call witnesses. They will first conduct examination of any witnesses they have. We call that direct examination. And then the Petitioning Creditors will have the right to conduct any cross-examination of those witnesses, and then Tagnetics will have the right to conduct what we call redirect examination, if they want, questions based upon any questions you may have asked them, and then you would be entitled to conduct any cross-examination of those witnesses.

Let's -- to the extent possible, let's avoid going back over the same ground we've already gone over, you know. And then after they complete their case, after Tagnetics completes its case, then the Petitioning Creditors will have an opportunity to present your cases.

You each, in effect, have your own case, and you can each call whatever witnesses you want in your own cases. You may testify in your own cases.

Fortunately or unfortunately, this is not the first time I've had pro se parties in my courtroom. It creates an awkward situation -- it makes it more awkward for hearings, because if you want to testify in your own case, what you have to do is get in the witness box, and in effect give a narrative, explain, you know, what statements you want to state that you think, you know, from an evidentiary factual viewpoint support your position.

If an objection is stated during your testimony, you need to make sure you stop and let me rule on the objection, and then after I rule on the objection, then you can proceed in accordance with my ruling on the objection.

You will not be able to ask each other questions. In effect, Mr. Kayser can't put Mr. Hager on the stand and stand at the lectern and ask questions, because unless any of you are lawyers -- my understanding, none of you are lawyers; is that correct?

DR. KAYSER: Yes.

THE COURT: That would constitute the unauthorized practice of law. So you can testify in your own cases, but you can't examine each other in your own cases, and you can have, you know, each other

testify in your cases, but again, you're going to have to get in the witness box and give a narrative of what you think support the cases.

Let's see if there's anything -- are there any questions on how that will operate?

DR. KAYSER: Yes, Your Honor. We had intended to each call each other as witnesses and ask the questions that apply to us all.

THE COURT: I kind of thought that might be the case from the way you filed your witness list, but you cannot do that. That is the unauthorized practice of law. You will not be able to do that. You may feel it puts you at a disadvantage, but you make conscious decisions to hire lawyers or not to hire lawyers.

DR. KAYSER: Understood.

THE COURT: And because you didn't hire a lawyer, I cannot -- I can't let you guys serve as lawyers. You need to go to law school, pass a bar exam, to do that. And since you haven't done that, you're not entitled. That's the law. That's the law in Ohio.

DR. KAYSER: Yeah. We're okay with it. We do understand. Your Honor, I'm sorry to ask for a clarification, but if each of us can call witnesses, can we -- but we can't call each other as witnesses?

THE COURT: You can call each other as witnesses, yes. You can do that. You each can get up there and testify in what we call a form of a narrative, stating your -- you know, what facts you think support each other's cases, but one of you can't be at the lectern asking another questions to elicit that testimony. That's serving as a lawyer, and that's the unauthorized practice of law, and you can't do it.

DR. KAYSER: Understood. Your Honor, one question. How do we present the exhibits then?

THE COURT: You can just say -- well, you can have the exhibits in the witness box, and then describe, okay, you know, I'm looking at, and you have to make sure that Tagnetics' counsel have copies of those exhibits, so they know what you're testifying about. And you can say, Your Honor, I'm looking at an email dated July 20th, 2019, it's from me to Mr. Stern, you know, and then that way you identify the document. And then that's how. And then when you're done you can move for admission of those exhibits, and that's how you would introduce exhibits.

DR. KAYSER: We'll do our best.

THE COURT: I understand. It's -- you know, it's -- that's what the law is. I have to enforce the law and apply the law, and that's the risk you take in

the situation you're in, representing yourselves on a pro se basis.

When we get done with all the evidentiary presentations, you'll be able to make closing arguments. That's where you have the opportunity to stand at the lectern and argue why the facts, which have been elicited today, support your legal position.

Now, with respect to the exhibits, I think there's some overlap with the exhibits. It's from a Court perspective, if you both -- let's say you both have July 20th, 2019 email as an exhibit, the Court finds it easier just to use one of those set of exhibits. They're duplicative on each side, rather than referring -- using two different copies of the same exhibit.

To that extent, the Court's preference would be to use Tagnetics' exhibits to the extent they're duplicate, just because they're a little bit easier for us to follow as they're more separate emails, for instance. But that's the only reason. From administrative ease purposes, that would work better from the Court's perspective.

So if Tagnetics has introduced, you know, the July 20th email, my preference is if you're going to refer to the July 20th email, just to use Tagnetics'

exhibit for that, so we don't have to, like I say, have duplicative same exhibits. And if Tagnetics has introduced a document already, and particularly if I've admitted it, you don't need to go through the process of identifying it and having it admitted. It's already been admitted. You can use that. We don't need to go over that groundwork with an exhibit that's already been admitted.

Any other questions before we get started with opening statements?

MR. KRACHT: Your Honor, I just want to note, one of our exhibits is a composite exhibit of all of what we believe to be the relevant emails and it's actually the A. Is that going to pose --

THE COURT: No, that's fine. I think that's -- you know, as long as each one gets admitted or the whole total gets admitted, that's fine.

MR. KRACHT: And if for some reason we would have say one or two excluded, that could be removed from the exhibit at the time.

THE COURT: Yeah, I think that's fine.

MR. KRACHT: Thank you.

THE COURT: Any questions from the Petitioning Creditors? No, okay. Great. Why don't we have opening statements then? Now, on the opening

statements -- go ahead and take the lectern, Mr. Stern. I just want to ask, when you are making opening statements or talking to Court, not as a witness, please take the lectern. Our recording system works much better that way. Now, if you're just making an objection to a witness's testimony, you can just stand up and make your objection from your seat, but generally making presentations and lengthier discussions with the Court, my preference is for you to stand at the lectern. When you're testifying, you'll be in the witness box.

I'm trying to think if there was something related to that. Well, that's all I can think of. I'm sorry, Mr. Stern. One other thing we could do, let's -- what I'd like to do is have Ms. Behnken swear in the three Petitioning Creditors and then we'll take a five-minute break and you can make your opening statements.

The reason I'd like the Petitioning Creditors to be sworn is what we have found after, like I said, unfortunately having a number of pro se parties in the courtroom before, it's difficult for them to separate out what's a legal argument or a statement at the lectern, versus testimony, and so it's easier for us just to have them under oath for everything they state, and that way we don't have to worry about well, was

that sworn testimony or not sworn testimony. So anything you state, we're going to, in effect, treat as sworn testimony, and swear you in now.

THE CLERK: Your Honor, are you okay with swearing all of them at the same time?

THE COURT: Yeah, that's fine.

THE CLERK: Gentlemen, please stand.

(Petitioning Creditors sworn.)

THE CLERK: Thank you.

THE COURT: Okay, let's take a five-minute recess and then you can make your opening statements.

THE CLERK: All rise. Court is in recess.

(Off the record from 9:50 a.m. until 9:58 a.m.)

THE CLERK: Court is again in session. You may be seated.

THE COURT: Okay. I wanted to clarify one thing. Now, we have to treat each of the Petitioning Creditors' cases, in effect, as a separate case. Mr. Kayser, if you want to call Mr. Hager or Mr. Earley in your case, you can, and you can examine them from the lectern. And Mr. Earley, you can do the same with Mr. Kayser and Mr. Hager. And same with Mr. Hager, he can call Mr. Kayser and Mr. Earley, and examine them. That's -- a pro se party can do that. That's not the

unauthorized practice of law.

Now, Mr. Kayser though can't question witnesses in Mr. Hager's case or Mr. Earley's case, and vice versa.

DR. KAYSER: Okay.

THE COURT: So Mr. Kayser, if you want to examine Mr. Earley and Mr. Hager in your case, you may do so, and Mr. Earley, you can do the same with the other two, and Mr. Hager, you can do the same with the other two. You just can't serve as lawyers in anybody else's case. Okay. I wanted to clarify that. We're all on the same page with that?

DR. KAYSER: Yes, Your Honor.

THE COURT: Great. We ready for opening statements?

MR. STERN: Yes, Your Honor.

THE COURT: You may proceed, Mr. Stern, and then after Mr. Stern makes the opening statement for Tagnetics, each of you can make your opening statements, if you wish.

MR. STERN: Good morning, Your Honor. May it please the Court, I am Stephen Stern on behalf of the alleged Debtor, Tagnetics, Inc. We are here today on our motion to enforce the settlement agreement. We think the terms are pretty clearly set forth. The

pertinent email is a series of emails that I refer to in the motion as our term sheet that were exchanged on July 26, 2019, and it lays out very clearly the terms of the -- the key terms of the agreement.

And as that email string reflects, the alleged Creditors, not once, not twice, but three times confirmed in writing the terms of that -- those key terms of the settlement agreement, and this was communicated to the Court, that we have an agreement in place.

It was only after the fact, when we exchanged the written settlement agreement, where we learned about these alleged concerns that they had, clearly going beyond the scope of the payment terms that were set forth, and the phrase -- key phrase in the term sheet says "full mutual releases, no carve-outs." And as the Creditors are seeking, there's a number of carve-outs that they are seeking.

One thing that I would like to point out, and if there was any confusion when looking at our brief, I refer to 123, there's a reference to an email in the brief on July 26. It is on Page 6 of our brief, where we copied the chart of an email that was sent from Mr. Hager to me on July 26 at 4:42 on there. That was not attached to our brief. That was our exhibits, Exhibit

I. That was added after the fact. Exhibits that we put for our exhibits today do mirror the exhibits we had attached to our motion, except Exhibit I is the only added one, and that is the one that contains that missing email there, in the event there's any confusion on the part of the Court when looking through the brief. My apologies about that oversight.

But as that third email reflects, in caps it says, "Total settlement," with those numbers, and yet the alleged Creditors are seeking additional payments beyond that total settlement figure, and again seeking exceptions to the full mutual releases, no carve-outs.

Those discussions happened over a period of time, and those emails reflect, I repeatedly encouraged the alleged Creditors to seek counsel, to advise them on this process. And just to be perfectly frank, was quite surprised when seeing the exceptions and the additional payments that they were seeking after the fact.

We think the settlement agreement, which was -- I think it's Exhibit C -- Exhibit B, with the exhibits, Exhibit 2, to the motion, accurately sets forth the key terms of the agreement, and we're ready to proceed with the evidence that supports that.

Thank you, Your Honor.

THE COURT: Thank you, Mr. Stern. Okay. One of you want to at least start?

MR. EARLEY: Yes, sir, and I'll give the opening statement for all three of us.

THE COURT: Okay.

MR. EARLEY: Your Honor, the Petitioning Creditors intend to show that the terms of the proposed settlement agreement offered on August 14th in no way resembles the proposal forwarded -- put forth by the Petitioning Creditors on July 20th, 2019.

We also will show that the negotiations between Tagnetics and the Petitioning Creditors between July 20 and July 26 only focused on cash payments, and not any other term or terms of the agreement. The evidence will show a significant difference in the proposed settlement agreement, once Tagnetics secured the postponement of the scheduled trial.

THE COURT: Thank you. I will accept that as the opening statement of Mr. Earley. Mr. Kayser, do you wish to state anything different? You don't need to state the same thing Mr. Earley just stated. Is there anything additional you --

DR. KAYSER: There's nothing more I need to state until testimony.

THE COURT: Okay. So are you adopting Mr.

Earley's opening statement as your opening statement?

DR. KAYSER: Yes.

THE COURT: Okay, thank you. Same questions for you, Mr. Hager.

MR. HAGER: I'll adopt his statement.

THE COURT: This all goes back to the fact that you can't be each other's attorneys, and -- but I don't want to cover the same ground if we don't have to cover the same ground on this stuff. Okay. Mr. Stern, do you have any witnesses you wish to call?

MR. STERN: Yes, Your Honor. I'll be the testifying witness and Mr. Kracht will examine me.

THE COURT: Okay.

MR. STERN: I'm just going to take up with me the binder of exhibits.

THE COURT: That's fine. I do have one point. As you referenced Exhibit I, which you said was not attached to your motion. It does not appear that it's in my booklet either, so --

MR. STERN: Really? May I take a look at that?

THE COURT: Yeah, absolutely, please. Ms. Behnken.

MR. STERN: Does your binder have Exhibit I? Okay.

THE COURT: Okay, thank you.

THE CLERK: Sir, please stand. Raise your right hand.

MR. STERN: My apologies.

STEPHEN STERN, WITNESS, SWORN

THE CLERK: Please state your full name for the record.

MR. STERN: Stephen with a P-H, Stern, S-T-E-R-N.

THE CLERK: Thank you.

DIRECT EXAMINATION OF STEPHEN STERN

BY MR. KRACHT:

Q Mr. Stern, you're one of the lawyers for Tagnetics in this case, correct?

A I am.

Q Can you provide some background of your nature of your practice?

A Sure. I was admitted to practice in 1996, after I graduated from GW Law School. I forget whether I was admitted in October, November, December, but that was when I was first admitted to practice, and have been practicing for approximately 23 years.

My practice is litigation oriented. The early part of my career did a lot of employment counsel litigation and then over the last I'd say probably 15,

16 years, a good amount of commercial and business litigation, in courts. And along the way, negotiated many, many settlements.

Q Do you practice in the area of bankruptcy at all?

A I do not.

Q So this is your first foray into that?

A It is.

Q But you do -- would you say that the majority of your cases in your litigation practice go to trial, or are they settled?

A Trial is definitely the exception. Most are either resolved through settlement negotiations or on motions.

Q Okay. And so the settlement that we're talking about today in this case that we're seeking to enforce, is that something that is unique in your experience of how a settlement was negotiated?

A No. The only unique part I'd say is that this happened while I was on vacation, the discussions.

Q What role did you play in connection with the settlement negotiations with the Petitioning Creditors?

A Sure. I forgot the exact date. I can refer to the exhibits, but we -- that week -- I guess the week before I went on vacation, had some discussions. I

forgot whether it was with Mr. Kayser or Mr. Earley, opening the door -- it may have just been the email, when we first started communicating about the possibility of having settlement discussions.

They happened on and off over that week, leading up to the 16th. There was some discussions that were -- or demands that were made by the alleged Creditors, flat out rejected those. Then they made some -- then we made some counteroffers. Those were flat out rejected, and then the discussions really picked up in earnest the 24th, 25th and 26th. Really, the 26th is the key day.

Q Okay. I'm going to try to use this contraption here, and if you can turn to Tagnetics' Exhibit A, please?

A Okay.

Q If I can adjust this? Okay. Can you identify Exhibit A?

A Sure. This is a series of emails, email string, between me and the alleged Creditors. Even though sometimes only one of the alleged Creditors' emails appears, I remember on these emails, I was communicating with all of them, and that's reflected on some of them.

The email string starts on -- with an email from

me addressed to Mr. Kayser on Friday, July 19th, 2019, at 4:14 p.m., and then you can see the series of emails back and forth, where demands were made, rejected, and the reflection of our settlement negotiations, at least in writing, but does not account for every telephone communication that occurred.

Q Okay. So Exhibit A then goes from most recent to the earlier emails, so --

A Yes.

Q So it's in reverse order, correct?

A Correct.

Q Now, did you have any phone conversations during this period with any of the Petitioning Creditors?

A I did. I don't remember speaking -- when we had our first conversations. I may have spoken with Mr. Kayser once or twice, but on the date -- key day, July 26, I was speaking primarily, if not exclusively, with Mr. Earley.

Q Okay. Directing your attention to Exhibit A, if you can go through several of those earlier emails, where there are a number, it would appear, of both monetary items that are being discussed, as well as non-monetary items. Can you address those, please?

A Sure. I guess the first one does reflect that I spoke with Mr. Kayser, either earlier that day or the

day before, because it opens up with, "Following up on our conversation, this email identifies everyone who should be copied on email communications, regarding potential settlement discussions."

Q And that's the July 19 email, correct?

A Yes, and this is where I was setting the groundwork, because I was going away on vacation the following day. I wanted to make sure that people were available to communicate, in the event I had trouble being able to access email or phone calls. I wanted to make sure my partner, Jon Kagan, was available to step in if need be. Fortunately, there were no difficulties communicating. I was able to communicate the entire time, so he was not really involved in the process.

Q Okay. I'm directing your attention to the next email in line there. It looks like it's July 20th at 4:54.

A Yes, I see that one.

Q And who is that from?

A That was sent from Mr. Kayser to me, and with a CC to a number of other people involved in the case, including the other alleged Creditors, you as my co-counsel, and other people -- other attorneys that were as co-counsel in the case.

Q Okay. And can you describe for the Court what

was the subject matter of that email?
A Sure. This reflects a substantive communication about potential settlement, where Mr. Kayser, on behalf of -- what I interpreted, on behalf of himself, and it does say "our final offer," so I interpreted this to be him speaking on behalf of him, Mr. Earley, and Mr. -- I'm drawing a blank.
Q Mr. Hager?
A Mr. Hager. My apologies. That they made monetary demands, which are reflected there in the first part of the email. You can see certain monetary amounts to Mr. Earley, Mr. Kayser, Mr. Hager, with the total being -- or payments to all three of them -- $486,700 and change. And then it goes on to proceed with setting forth other combination of non-monetary demands, and some other monetary demands to be made, to be included, as well, in the settlement.
Q And did you respond to those gentlemen?
A Yes. My response is reflected in the next email in the string, which is on Page 5 of the exhibit. It's an email from me to Mr. Kayser, Mr. Earley, Mr. Hager. It's address to Ken, Ron and Jon. It's at 10:46 a.m., and in that email I acknowledge receipt of their demand, and while I -- and I'm reading the second sentence, "While I and the Tagnetics team appreciate

the overture to try to reach negotiated resolution, event you put forward is not realistic." And I go on to explain why what they're requesting is not even on the table for a realistic settlement discussion.

Q Okay. And would you present to the Court what those objections were to that proposal?

A Sure. So part of the problem was a large monetary payment up front, initial payment, and that was something I explained in Paragraph 2, that is not feasible. Talked a little bit about some of the structures to a deal that we could possibly accommodate at the time, but was only -- what was a potential possibility, not making any clear offer or saying this will be a deal term.

Then in the third paragraph I go on to say, "insisting on any other structure than what I've outlined above all but assumes that we proceed with the bankruptcy proceeding." So structurally they're putting forth all these monetary terms, was way out of line with what Tagnetics was willing or able to do.

Q Okay. Directing your attention to the response, I take it, from that.

A Yeah. I'm just -- this is where I first encouraged them to seek their own counsel in this -- I'm sorry, I did not do that there. Oh, no, I do. If

you look at the one, two, three, fourth email, I do at the very end of that say, "You can and should seek your own counsel, as I'm sure he or she will tell you the same thing," the stuff that I was saying about what happens if you proceed with bankruptcy.

Q That's the fourth paragraph on the July 23rd email at 10:46; is that correct?

A Yes.

Q Did any of the Petitioning Creditors respond to that communication?

A They did. A little while later, not much after my email, Mr. Earley responded in an email at 1:34 p.m., again with some CCs on it, and then after rejecting, without putting out any specific terms, he then put forth a new offer, and it says, "Stephen, here is our offer after your email this morning. Let me know if there is any interest." And in that email there's a chart that is reflected at the top of Page 5 of this email string, and it lays out a series of monetary payments. There are no other terms referenced in that email. It is strictly a monetary payment chart.

Q And did you respond to that proposal?

A I did. My next email is the following day in the afternoon. Looks like on July 24th at 5:56 p.m.,

just Ron, Ken and Jon, "Thank you for your revised demand. This structure is more in line with what Tagnetics thinks is feasible, but the initial payment is way too high for a cash-strapped company." And I go on to explain what we're looking at in terms of a potential lower initial monetary payment. Then after -- which we offered a lower number there.

"The remainder of the payment schedule, after the initial payment you proposed, is acceptable, provided that the payments are contingent," and I go on to some contingencies. And I go on explaining that further. And then just go on to continue explaining that in the email.

Q Okay. Did you receive a response to your email from any of the Petitioning Creditors?

A It was a flat-out rejection completely, email from Mr. Earley later that evening, on the 24th. His email is very short and succinct. It says, "Stephen, no chance. Look forward to meeting you on Monday." So no counter proposal or anything on that.

Q And that's reflected, is it not, in what's referenced as a July 24, 2019 email from Mr. Earley to you at 7:43 p.m., correct?

A That's correct, and that's on Page 3 of the exhibit.

Q Did you respond to Mr. Earley's response?
A I did. The next day I sent a short email that says, "It seems silly and, quite frankly, odd to simply cut off negotiations. If there is a counteroffer you would like Tagnetics to consider, please send it and I will forward it to the company for consideration. Continuing down this path essentially guarantees that you, Ken and Jon do not receive any money, and each of you are at risk for having to pay money, parens, and the money that Ken received last week in settlement through KBL is subject to a preference and will have to be returned if the Court imposes a bankruptcy on the company. I look forward to your response." And that's on July 25th, 2019, at 12:42 p.m. from me to all three of them, even though it only shows Ron's name there.
Q And that would be at the top of Page 3 of Exhibit A, correct?
A Correct.
Q Okay. Did you receive a response from any of the Petitioning Creditors to that email?
A I did. Later that day, looks like even less than an hour later, I received a response from Mr. Earley at 1:25 p.m., and that email is reflected at the bottom of Page 2 of the exhibit, on to the top of Page 3, and again it's pretty short and to the point. It

says, "Stephen, they raised 90,000 for the first settlement, they should be able to find another 90 for us. Here is my counter proposal." And it lists that -- well, I'll call the payment schedule chart that was included below, with different numbers, and it shows an initial payment 30,000 each, to each of the three alleged Creditors, and then two subsequent payments at six and 12 months, and then there is an additional payment at -- upon the occurrence of what was referred to as a liquidity event, and then the last line of that chart shows the total payments to each of the three alleged Creditors. No other terms or conditions are reflected in that email or counter proposal from Mr. Earley.

Q Okay. And that response shows up on Page 2, at the bottom of Page 2, email from Mr. Earley, dated July 25th at 1:25, and the chart you're talking about carries over onto the next page, top of Page 3, correct?

A Correct.

Q Did you respond to that email?

A I did. The next morning at 8:24 a.m., I sent an email, again, to -- responding, saying, "Ron, while we appreciate your logic around the $90,000" -- it says "90k number," "$90,000 number, you are miscalculating

the company's situation. We had hoped to negotiate with you outside of court on settlement while the parties pursued arbitration, as the terms of your contracts require, but the Court ruled against that. The company does not have an ability to raise another 90k in the near term. Now, unfortunately, the options to avoid substantial risk on both sides is very limited. The three of you prevail on Monday, your claims will be worthless, and Ken and Bob, as well as S-Tek and counsel for KBL, and S-Tek will have to return the money they received last week. If Tagnetics prevails, the company will move to require that you pay all Tagnetics' attorneys' fees and litigation costs in this matter, which are significant and growing by the day."

Go on to proceed, "Tagnetics and I cannot understand why each of you are pursuing the course of action that essentially guarantees you will not get paid the amounts you claim you are owed. The company has made a reasonable proposal. I would like to hear back from each of you on the company's most recent proposal. Ken and Jon, I have not heard back from you and I would like to know your position, as well. As before, in light of the risks involved, I suggest you seek advice from bankruptcy counsel. The path you have

chosen seems counterproductive and contrary to the outcome you claim to seek."

Q Did you receive a response from any of the Petitioning Creditors to that email?

A I did. So really -- well, what happened between that and the next email, which is on this email string, is at, looks like 3:27 p.m., or that email at 8:24 p.m., I remember this very distinctly, because that was my last day of vacation. We were heading home that day, and I was supposed to be driving. I was in the passenger seat. Had a bunch of calls in the morning on matters related to this and other stuff, and then starting early in the afternoon, I remember it was around one o'clock, give or take a little bit, the phone calls became fast and furious between me and -- not exclusively Mr. Earley, certainly primarily with Mr. Earley. I think it was exclusively with Mr. Earley, where we were calling one another frequently, going back and forth, trying to negotiate a settlement. And we ultimately did reach one.

And I remember, when we finally came to terms on one, I was very deliberate in how I worded things, and one of the key terms, before we closed the deal, one of the things that they insisted on, was that they get full releases, completely, and I had some real concerns

about that, representing the company for certain reasons that I don't think are pertinent here, but I said, I'm duty bound to bring this to my client's attention, I will do that, I will tell you I'm not recommending it, but I'll let the client know. And after some discussions with the CEO of the company, I was told I was authorized to make an agreement that included the monetary terms that we ultimately agreed to, which are reflected in the email, but the key was also full mutual releases, no carve-outs. And that's reflected in my email later on that reflects the terms.

And I remember, the company was fine, giving the three alleged Creditors full releases, despite some of the reservations I had, as long as it was mutual, full mutual releases, no carve-outs, and that was the phrase that went over, over and over again, in my discussions.

Q And that discussion occurred on that issue as a result of concerns that one or more of the Petitioning Creditors had about claims that the company may have against them, correct?

A Correct. They were very clear about that, and wanted to be released from certain terms of other agreements that they had with the company, and it was adamant that that was not negotiable from their perspective, and so they wanted to make sure that they

were fully released, and the company's response was, if we're going to fully release them, we're going to get full release, as well, and move on from there.

Q So was the concept of a mutual release with no carve-outs dictated by the Petitioning Creditors?

A I think so, because they were the ones that was driving it, and my client -- our client ultimately said they were fine with it, as long as it's mutual, and they were willing to go along with that.

Q Okay. Directing your attention to Page 1 of Exhibit A, I think you referred to that in opening as the term sheet?

A This is. This is where, after we had -- remember, there were many phone calls. When we finally came to terms, I remember I said to Mr. Earley, I'm going to then send you an email that sets forth the key terms, and I want to make sure that I hear back from you guys, confirming before we call the Court, that this is what we agreed to. We should not be calling the Court until we have an email exchange confirming this is what we agreed to.

I was very sensitive to the fact that we have pro se parties. I was also very aware of the sensitivity of these negotiations. I was very, very deliberate about this, because now that we were at that

point, I wanted to make sure there was no misunderstandings. And I wrote it out that way too. My email clearly says, at 3:27 p.m., "Ron, Kevin, Jon, below sets forth the terms of the agreement we reached by phone. Each of you please reply, confirming agreement to these terms, and that I need you to initiate a call to the Court to advise of the settlement. It makes no sense for us to have to show up at court on Monday, now that we have an agreement in place that will be documented more thoroughly in a settlement agreement. We can work on the written settlement agreement over the weekend." And I wrote, "Key terms: Payment of $90,000 ($30,000 each), within three days of a fully executed agreement. The remaining schedule of payments as you proposed below, accepting 12 and 18 months instead of six and 12 months." And that's referring to the schedule that I was referring to, the schedule chart that's reflected in July 25th email.

And then that phrase, "full mutual releases (no carve-outs)." Then another term, "Dismissal/withdrawal of claims by each of you to be filed within one day of receiving payment." And I said, "I believe this captures the key terms we discussed. Please confirm."

And then I remember there was a bit of a delay.

I was a bit surprised by the delay. I called Mr. Earley once or twice. I may have spoken with Mr. Kayser. I don't remember exactly who I was speaking with at this time. I'm pretty sure at least one of them was Mr. Earley. And I said -- and I got an email response from Mr. Hager at 3:56 p.m. saying, "Mr. Earley is discussing this with the Court at this moment. I am responding for Kayser, Early and Hager, saying we agree to the terms put forth as documented above." He wrote "above," but it's really -- I interpret that to mean the email below. And so that was confirmation number one, that the term sheet, as I described it, in my 3:27 p.m. email, is agreed to and confirmed.

Q Okay. Then at the top of Exhibit A on Page 1, there's another email from Mr. Hager.

A Yes.

Q At 3:58, which is within the same time frame here. And could you address that, as well?

A And there, so to me that's confirmation number two. What he did is he copied my email at 3:27 p.m. and copied it into his email. He says, "Stephen, I will clarify that we agree to the terms you set forth in your last email and represented below. Key terms." And lists those four key terms that I just described

moments ago, and no other terms, none of these other terms that were referenced in the July 20th email or anything earlier. These are the key terms of the settlement agreement.

Q All right. I'm asking you to refer now to Exhibit I, which now the Judge has a copy of, as well. Can you identify what Exhibit I represents?

A So again, there was some back and forth about when I was going to hear from the Court. I ultimately did speak with -- forgive me for referring to you by your first name. I remember Joni. I don't want to mispronounce the last name. I did eventually speak with her.

I got an email from Mr. Hager at 4:09 saying, "Stephen, the Court will be calling you momentarily to confirm we have an agreement among all parties." And then a short while after that, he sent another email to me, again -- so for the third time, confirming the key terms of the agreement. It's the top email in that string on Exhibit I, July 26, 2019, it says at 4:36 p.m., and it's from Mr. Hager to me, with a copy to Mr. Earley and Mr. Kayser. It says, "Stephen, to make sure there is no confusion, we are confirming the following payment schedule and amount as part of this agreement," and lays out that payment chart that I was referring to

earlier. It's the same exact one that we agreed to, except the only difference is there's two differences, or three.

The second and third payments instead of six and 12 months, now are written out to be 12 and 18 months, which accurately reflects what we agreed to, and then in the bottom line where totals of payments, it says, "Total settlement," and the "Total" is written in all caps, to me emphasizing the point, this is what we agreed to, total settlement payment, nothing more beyond that.

Q Thank you. Directing your attention now to Exhibit B.

A B as in boy?

Q B as in boy. Can you identify that? I believe there's an email on the first page.

A Yes. This is -- so the first page is the cover email that I sent to Mr. Kayser, Mr. Earley and Mr. Hager, attaching the draft settlement agreement. I worked on the settlement agreement. Admittedly, it took me a little bit longer than I had originally anticipated. That was unfortunate, but I did get it to them, out by the date that I committed to getting it to them, after we had the status conference with the Court, and then the subsequent pages of that exhibit

reflect what the agreement that I drafted, that I believe accurately reflects and is taken off of the term sheet, those email exchanges between me and the alleged Creditors, on July 26th.

Q All right. I'm also directing your attention now to Exhibit H, if you will. Originally there were six Petitioning Creditors; is that correct?

A Correct. Originally six, three of which settled out earlier in this case, and Exhibit H reflects a redacted version of that settlement agreement with the other three Petitioning Creditors in this case. Those Petitioning Creditors were KBL Ventures, LTD, which I understand to be owned by Mr. Kayser, one of the remaining Petitioning Creditors and one of the people here today, and that is reflected in -- at least as the CEO, because if you look at the last page of that exhibit, he is the one that signed on behalf of Kayser Ventures, LTD. That's on Page 6.

The other settling Petitioning Creditors in that settlement agreement were S-Tek, Inc., and a gentleman by the name of Robert Strain.

Q You negotiated that settlement, as well; is that correct?

A I did. I negotiated that settlement with Kayser Ventures and S-Tek were represented by counsel and Mr.

Strain was proceeding pro se. Most of the negotiations were with the attorney. There was some negotiations separately with Mr. Strain, but not much.

Q Other than -- well, the redacted sections here most likely deal with the monetary aspects of the transaction, I take it?

A They were. It deals with the monetary aspects of it, some non-monetary terms, typical language about -- you know, I took out all those terms. I left in here for purposes of this proceeding only the introduction, just show who this is between, the signature page again to show who it's between, and then elements of or portions of the releases, because one of the objections that we got subsequent to sharing the draft settlement agreement was including Compass Marketing, Inc., specifically among the releases. And I was very, very surprised to see that, because first of all --

Q What you're saying is that after you transmitted what has been identified as a part of Exhibit B, the settlement agreement, regarding the remaining Petitioning Creditors, that one of the issues that came up was whether or not there should be a carve-out as to Compass?

A Yes. I'm sorry. Thank you for that

clarification. So, yes. After I transmitted Exhibit B, one of the responses I got back from the alleged Creditors was an objection to including Compass Marketing, Inc., in the release. If you look at Exhibit B for a moment, if you look at -- in Paragraph -- in Section 4, Section 5 and Section 6, which are the releases that would be provided by Mr. Kayser, in 4 Mr. Early, in 5 Mr. Hager, and 6, I'll just read the opening of Mr. Kayser's paragraph, because the language mirrors itself. "In exchange for the consideration described herein, Kenneth Kayser on his own behalf and on behalf of his heirs, successors and assigns, as well as all corporate and operating affiliates, related entities, in which Kenneth Kayser has controlling interest, hereby releases and discharges Tagnetics, as well as its current and former parent companies, corporate and operating affiliates, subsidiaries, and related entities (including specifically Compass Marketing, Inc., as well as each of their current and former directors, officers, shareholders and other equity holders, agents, employees, accountants, attorneys, insurers, collectively the Tagnetics releasees.)" And that language appears in each of the release paragraphs.

The reason why --

Q Was this any different than the nature and scope of the releases in the original settlement agreement that's referenced as Exhibit H, with the --

DR. KAYSER: Your Honor, I object to this line of questioning as relevance. I mean, what was appropriate to settle with Kayser Ventures is not necessarily appropriate with what a settlement would be with the individuals who had contracts with Tagnetics.

THE COURT: Any response, Mr. Kracht?

MR. KRACHT: Yes, Your Honor. We're getting to the point that we were going to try to make on that. It has to do with whether there was a carve-out or not that was requested and the logic of that, and how these otherwise were similar agreements drafted after negotiations by Mr. Stern, with the original -- the other Petitioning Creditors that were released, which included in part, because of his status with Kayser Ventures, Mr. Kayser, as well.

THE COURT: I'm going to overrule the objection, but let me state this. I'm going to let you finish this questioning, but I'm going to be honest. I'm very skeptical of the position that Compass -- this argument or position that including Compass in the release would be a carve-out. I don't understand that from a legal perspective. I don't follow your argument

that including Compass in the release would be a carve-out. And okay, I can understand that, if the July 26th emails said based upon all the terms in the settlement agreement with Strain and KB whatever, and so forth, but that's not what the July 26th email says.

MR. KRACHT: Correct, Your Honor.

THE COURT: So I'm being honest with you, I'm --

MR. KRACHT: Quite frankly --

THE COURT: I'm not buying it right now, and you're going to have to do an awful lot of convincing that including Compass in the release is a carve-out.

MR. KRACHT: We're not saying that, Your Honor. We're saying that there was no carve-out, saying that the release didn't apply to Compass. They were a part of the overall release that was given. A carve-out of Compass would have said, you know, the Tagnetics, its officers, directors, affiliates, blah, blah, blah, excepting Compass, which would give -- what would have occurred if that happened, would have been they would have been able to retain any claims they may have against Compass. That would have been the carve-out. We didn't agree to the carve-out.

THE COURT: I understand that's your argument. I understand that.

MR. KRACHT: Mm-hmm.

THE COURT: But your July 26th emails don't say Tagnetics, its affiliates, Compass, blah, blah, blah. And so I don't know how you explode and include your July 26 email to include all the affiliates and everything, when the key terms and everything else, from what I read, don't include affiliates and blah, blah, blah, and officers and agents and blah, blah, blah.

MR. KRACHT: That's why we're --

THE COURT: The settlement agreement does.

MR. KRACHT: That's why we're contrasting, to the extent there is something to contrast, the earlier settlement agreement, because there is a distinction, there was a carve-out there that we were going to get to.

THE COURT: Again, I'll let you proceed with this questioning. I'll overrule the objection, but, you know, I'm skeptical about this position.

MR. KRACHT: Understood.

MR. STERN: Well, as in every settlement agreement I've drafted in my career on behalf of a company, I don't think there's a single one that I could think of off the top of my head, where I did not include the entity itself that's a party to the case,

its parents, affiliates and subsidiaries. That's standard operating procedure in any settlement agreement, I think I've ever done in my entire career. And in this case, an affiliate of Tagnetics is Compass Marketing, Inc., and as evidenced by the fact that we included specifically Compass Marketing, Inc. in the prior settlement that Mr. Kayser had signed, to show that this is not a surprise. This is something that was standard procedure in settlements generally, parents, subs, operating affiliates, so that's in all -- typical in agreements, and in this case specifically Compass, because Mr. Kayser had signed on that before. And we didn't specifically mention Compass before that either, until we got to the draft settlement agreement, which Mr. Kayser signed, without objection.

So when I got the objection later on, after I sent Exhibit B to the alleged Creditors, I was very surprised. I'm just mirroring the language that was acceptable before, and is typical in all sorts of agreements about -- where you release affiliates, parents and subs, and that's -- again, I don't think I've ever done an agreement where it didn't include that language.

BY MR. KRACHT:

Q Now, when you look at Exhibit H, the prior

settlement, there was a carve-out that was addressed in that particular case, right?

A Yes, thank you. So we did have to include a carve-out and we could provide an un-redacted version, if need be. It is redacted in here. But the KBL releases, because Mr. Kayser is an individual who owns KBL, as we understood it, there is a carve-out at the end of his -- of his release, because if you look at the language -- I'm going to read Page 2, Section 5, of Exhibit H.

"KBL releases. In exchange for the consideration described herein, Kayser Ventures, LTD, on its own behalf and on behalf of its current and former parent companies, corporate operating affiliates, subsidiaries and related entities, as well as each of their current and former directors, officers, shareholders and other equity holders," and then go on and on. Releases, Tagnetics, and again has the same language there, "its corporate operating affiliates, subsidiaries and related entities, including specifically Compass Marketing, Inc."

The reason why we had to include a carve-out at the end of Section 5, because we knew that Mr. Kayser had his own individual claims, and based on that language, we did not negotiate a separate settlement

for his individual claims. We knew that he was proceeding on those. It was part of the understanding of the deal terms. It would have been intellectually dishonest to try to -- try to get a release of his individual claims, when you had the KBL claims and were only negotiating about KBL at the time. We were not negotiating about Mr. Kayser's individual claims.

So, at the end of this paragraph -- it is redacted, but we could provide an un-redacted version.

DR. KAYSER: Your Honor, I object. I do not have in front of me what he's reading from, and so I can't follow what's going on here. And in addition, this is irrelevant. What Kayser Ventures' settlement said does not affect and was never meant to affect, and my counsel for Kayser Ventures isn't here.

THE COURT: Do you have -- let me ask you, Mr. Kayser, do you have their exhibits in front of you?

DR. KAYSER: But it's redacted in there, also. And I didn't bring with me the settlement agreement from Kayser Ventures.

THE COURT: Well, I think he was reading from -- is the carve-out redacted or is the carve-out -- are the carve-outs redacted?

MR. STERN: It should be at the end of --

THE COURT: I'm going to sustain the

objection then. If you're talking about something that was redacted from the exhibit, I agree. I think Mr. Kayser is absolutely right, and I'm going to sustain the objection, to the extent you're testifying about him trying to read something that's redacted from an exhibit. And let me say this much, I will probably -- if they move admission of Exhibit H, I will probably admit it, but I'm, again, being forthright and honest, from what I've seen of everything, I tend to agree, Exhibit H, I think, is irrelevant. I'm being forthright and honest with you. You know, I think really for the most part, Exhibit H is irrelevant, because what you -- what terms you entered into with other parties on another settlement, even though a same case, I'm struggling to understand the relevance to settlement with these three other parties.

MR. KRACHT: Just a question, Your Honor. Would it be permissible to substitute Exhibit H, redacted version, with a revised version that shows that language that we're talking about now?

THE COURT: Is there objection --

DR. KAYSER: Yes, I would object in that it's irrelevant.

MR. KRACHT: Mr. Kayser was a party to --

DR. KAYSER: It's a separate entity. The

fact that I happened to be the chairman of that company is not relevant to this portion of the case.

THE COURT: Mr. Earley, any objection?

MR. EARLEY: I object also. I agree.

THE COURT: Mr. Hager?

MR. HAGER: I object, likewise.

THE COURT: Yeah, I'm going to sustain those objections. You know, we had exhibit filing date, and that's why we have exhibit filing dates. You had plenty of opportunity to consider this. And now you want to substitute one that you think is more favorable to you than the one you submitted in this largely redacted version. And not only that, I mean, I often will allow exhibits to be introduced, even though they missed the filing date, but I do -- again, coupled with the fact that I do believe Exhibit H is not -- is largely, if not totally, irrelevant to what's before me today, I'm going to sustain the objection.

MR. KRACHT: Thank you, Your Honor.

THE COURT: To the request you've made.

BY MR. KRACHT:

Q Okay. Mr. Stern, if you can look to Exhibit C?

A Yes.

Q Can you identify that document?

A This is an email from me to Mr. Hager, with a

copy to Mr. Kayser, and Earley, on August 19, 2019, at 7:48 p.m., where I am responding. It's an email string. That's the most recent one in the string was the one I just identified. There's an earlier email in this string from Mr. Hager to me, with a copy to Mr. Kayser, Mr. Earley, on August 16th, 2019, at 2:19 p.m.

Q And that's on Page 2 of Exhibit C, correct?

A Yes, and in that first email in the string, from Mr. Hager, it sets forth a number of objections that they have to the terms -- the written terms of the settlement agreement, that I provided to them, as in Exhibit B, on August 14th.

Q Okay. And you responded to those objections to the settlement agreement?

A I did, and that's my August 19th email to them, which is the first page of the exhibit, where I try to go through the substantive discussions and explain, you know -- I mean, I guess my opening line is, "Many of the terms included below clearly fall outside the scope of what we agreed to, the email exchange we had on July 26, 2019, at 3:56 p.m. and again at 3:58 p.m." Apparently some of the times must have been flipping back and forth in the emails, now that I'm looking at this. "Without going blow by blow, the terms of Paragraph 4 clearly call for payments that were not

included in the July 26 email exchange, setting forth the settlement payments. In addition, those requests for additional payments clearly seek an exception to the full mutual releases, no carve-outs. I'm not sure how you can now ask for payments that were not previously agreed to, seek exceptions to full mutual releases, no carve-outs."

And it goes on to explain those a little bit more detail. I'm going, again, back to the full mutual releases, no carve-outs, that's a repeated theme of these discussions. There's some other terms at the bottom, where they were making a request for default judgment. Again, that was something that was entertained in earlier emails. I'd have to look back at email or Exhibit A. I think it was on the 20th. It was around where maybe 23rd, 24th, where the discussion of default judgment was a possibility, but it clearly wasn't one of the terms that were agreed to, because there were not one, not two, but three emails confirming the key terms of the agreement, without any discussion for these other non-monetary terms. Not once was that included.

Q And those non-monetary terms would have been various carve-outs that they were seeking now after the fact?

A Correct.
Q Directing your attention to Exhibit D.
A Yes.
Q Can you identify that, please?
A So this is a response to -- another response to the draft settlement agreement I provided on the 14th. This is an email from Mr. Earley on the 16th at 11:52 a.m., and he expresses concerns similar to Jon Hager's, and added a few other terms about a $30,000 loan accruing interest, and then something related to stock ownership. He refers to Jon's, even though Jon's didn't come to me until later in the day, I believe. So obviously they -- I'm assuming they exchanged discussions or emails and didn't realize the timing of events, but these two were -- I interpreted as being sent in collaboration with one another.
Q Directing your attention to -- we'll skip over E. If you'd take a look at Exhibit F?
A And then this is -- Mr. Earley apparently sent an email to Mr. Hager and Mr. Kayser on August 20th, 2019, at 5:13 p.m., which he subsequently forwarded to me on the 21st of August at 7:25 a.m., and it was only to me, where they're identifying some additional concerns about the settlement agreement, based on a conversation that Mr. Earley had with a lawyer. There

were concerns about the general release language. It sought a new provision that wasn't discussed before, an acceleration clause for payments, something about a non-compete agreement, which was not previously discussed, and changing the voluntary dismissal of this proceeding to without prejudice, instead of with prejudice. And then another statement about some $30,000 loan, all of which we did not discuss previously.

Q So --

A The only thing that might arguably have been discussed, but again was Item 1, where they're making an exception for Compass Marketing, but again from my mind, full mutual releases, no carve-outs, that means all parents, subs, and operating affiliates. Compass Marketing is an operating affiliate under Ohio law, as I understand it, because of its ownership interest in the entity. We just decided to identify specifically in the agreement, so that there wasn't an ambiguity about that later on, because under Ohio law, as I understand it, it constitutes an affiliate.

Q So how did you and Tagnetics view these post-settlement communications from the Petitioning Creditors?

A Sure. I guess -- I want to be careful about not

revealing privileged communications, but Tagnetics was surprised. I was certainly surprised. This to me was clearly outside the scope of what we agreed to. I was -- as I mentioned earlier, I wanted to be very careful about how I communicated those terms at the end, before we called the Court. And as I mentioned before, there is not one, not two, but three confirming emails to them, confirming the total payments and what the key terms were, repeating the full mutual releases, no carve-outs. So this to me looked like more and more exceptions. To use the phrase, buyer's remorse. I don't know why there's been a change of heart, it seemed to me, but that's the way I was interpreting it, and that's the way I can fairly describe what Tagnetics' reaction was, as well.

Q Okay. If you'll take a look at the next exhibit? I believe it's the final one, Exhibit G.

A Okay.

Q Can you identify that?

A Sure. This looks like -- let me go back to the first email here. This is more in the string of the -- so the first email in the string is from Mr. Hager to me, with a copy to Mr. Kayser and Mr. Earley, on August 16th, where they identified their concern slash objections to the settlement agreement that I provided

on the 14th.

The next email in that string is my response that we had identified earlier. I think that was Exhibit D. No, C is the next one in that string, I believe, if I'm reading them correctly. Yes. And then this is a response to my August 19th email, and this came from Mr. Hager to me, with a copy to Mr. Kayser and Mr. Earley on August 20th, 2019, at 9:23 a.m., again trying to explain what I saw as the different terms and conditions than what we had agreed to on July 26th.

Q Essentially then, to try to re-trade the settlement that was reached on July 26th?

A Yes.

MR. KRACHT: I have nothing further, Your Honor.

THE COURT: Thank you, Mr. Kracht.

MR. KRACHT: Would you entertain introduction at this time or would you prefer to do that --

THE COURT: Yeah, I think that would be fine, if you want to move admission.

MR. KRACHT: I'd like to move to admit Exhibits A through I.

THE COURT: Did you cover Exhibit E?

MR. KRACHT: I did not, and if I could have a

minute talking to my co-counsel, would that be permissible?

THE COURT: Yeah, you may do so. Unless you want to be on the record with this discussion, I'd get away from a microphone. Yeah, Petitioning Creditors, you can figure out whether you have any objections to admission of these exhibits and if you want to, you also -- I'll wait.

(Pause.)

MR. KRACHT: Your Honor, after conferring with co-counsel, I'm going to, if you would permit, ask him a few questions about that exhibit.

THE COURT: That's fine.

BY MR. KRACHT:

Q Directing your attention to Exhibit E.

A Yes.

Q Can you identify that, please?

A Sure. When preparing the motion to enforce the settlement agreement, I drafted this declaration for Mr. Luis Fernandez, where -- who was the CFO of Tagnetics, and he is now -- at the time he signed this, he was Acting CFO, and so I drafted this, sent it to him, asked him to make whatever tweaks or modifications he needed to make. He made a few small tweaks, signed this and sent it back to me to include with our brief

on the motion to enforce settlement agreement.
Q Okay. And it addresses what particular point?
A It addresses specifically Compass Marketing, Inc.'s ownership interest in Tagnetics, Inc.
Q And that was to what, demonstrate that it's an affiliate?
A Yes. To show -- because with the research that I had conducted under -- or my office had conducted and shared it with me, so I didn't actually do the research, to make sure I'm accurate in my statement to the Court. So, but based on my firm's research, under Ohio law, an affiliate is any person, and a person is defined as an individual or a corporate entity, that owns more than ten percent of another company. And in this case, based on the ownership interest of Compass Marketing having more than ten percent, we deemed it to be an affiliate under Ohio law.
Q Okay, thank you.
MR. KRACHT: Nothing further, Your Honor.
THE COURT: Okay. And you're moving admission of Exhibits A through I?
MR. KRACHT: Yes, Your Honor, correct.
THE COURT: Okay. Petitioning Creditors, you can let me know if you have any objections to the admission of any of those exhibits. You also have the

right to, if you want to ask Mr. Stern or any other witnesses questions about those exhibits, because you dispute their authenticity or something like that, before I admit them, you have the right to do that too. So if you want to have me reserve my ruling on the admission of those exhibits until you have the opportunity to examine witnesses about those exhibits, we can do that also.

DR. KAYSER: Your Honor, I'm concerned about the admission of this particular affidavit.

THE COURT: Exhibit E, Mr. Fernandez's affidavit?

DR. KAYSER: From Luis Fernandez, yes. And the reason being that, you know, I was a long-time director of this company, and as of the time of my serving on the Board of Directors, Compass Marketing was not a ten percent shareholder of this company. And that action may have taken place after the petition for involuntary bankruptcy was filed, and I would have to contact the lawyer, and we don't have Luis Fernandez here to testify when this change to the ownership of Tagnetics occurred, and I think that's an important consideration.

THE COURT: I think Mr. Kayser is making a hearsay objection to the admission of Exhibit E. He

didn't label that as a hearsay objection, but I think he articulately objected to Exhibit E on the basis of it being hearsay. Mr. Earley, do you have an objection to the admission?

MR. EARLEY: I also object.

THE COURT: Mr. Hager?

MR. HAGER: Also object.

THE COURT: Based upon their objections, I will not admit Exhibit E. I think it is flat-out hearsay. Mr. Kayser articulately stated why hearsay should not be admitted, particularly hearsay such as this, an affidavit of somebody who is not testifying today, that they do not have the ability to cross-examine on these statements. So I will not admit Exhibit E.

(Exhibit E rejected.)

THE COURT: What about the other exhibits, Mr. Kayser and Mr. Earley and Mr. Hager, other than E? Is there an objection or do you want me to reserve ruling on those exhibits?

DR. KAYSER: Can we have just a moment, Your Honor?

THE COURT: Yeah, absolutely. In fact, why don't we take a five-minute recess? You can discuss those and then we'll --

DR. KAYSER: Appreciate it. Thank you.

THE COURT: -- come back after a five-minute recess.

THE CLERK: All rise. Court is in recess.

(Off the record from 11:02 a.m. until 11:14 a.m.)

THE CLERK: Court is again in session. You may be seated.

THE COURT: Okay. We finished, I think, with the direct examination of Mr. Stern. And Mr. Kracht proposed the admission of Exhibits, Tagnetics' Exhibits A through I. I already ruled on Exhibit E and determined that E would not be admitted, based upon it being hearsay, and I don't believe there's any exception to the hearsay rule, which would cover an affidavit of a person who is not here to testify.

And so I think that leaves the remaining exhibits. And the Petitioning Creditors were conferring as to whether they had any objections to the admission of those other exhibits. So I think that's where we lie.

Mr. Kayser, any objection? And as I pointed out earlier too, if you want the Court to reserve ruling on admission of these other exhibits until you have the opportunity to examine Mr. Stern or any other

witnesses, concerning those exhibits, that's also something which the Court can do. So that being said, Mr. Kayser?

DR. KAYSER: I don't believe I have any objection to the other exhibits. They are primarily documents --

MR. HAGER: Your Honor, I guess the question, when you mention if we would like to cross, do we suggest that we reserve your ruling or --

THE COURT: You can still cross. You'll still have the opportunity to cross-examine Mr. Stern about his --

MR. HAGER: Sorry.

THE COURT: -- testimony. It's a good question. It's a good question. You still have the right to cross-examine Mr. Stern. All I was -- point I was making is -- is if you want me to reserve ruling on admission of the other exhibits, until you cross-examine Mr. Stern, because you may have some issue about the authenticity or something of any of these exhibits, I can reserve ruling on admission of those exhibits until you have that opportunity.

MR. HAGER: Thank you.

THE COURT: So I believe Mr. Kayser said he has no objections to admission of the other exhibits,

other than, you know, Exhibit E. Mr. Earley, what about you?

MR. EARLEY: The same. No objections.

THE COURT: Mr. Hager?

MR. HAGER: I have no objections.

THE COURT: Okay. Then the Court will admit Tagnetics' Exhibits A through I, except for E. We are not -- the Court is not going to admit Exhibit E, but will admit the other exhibits.

(Exhibits A, B, C, D, F, G, H, I admitted into evidence.)

MR. KRACHT: Thank you, Your Honor.

THE COURT: Okay. Now I think we're ready for any cross-examination of Mr. Stern. Mr. Kayser, do you wish to cross-examine Mr. Stern?

DR. KAYSER: I have a few questions for Mr. Stern, yes.

CROSS-EXAMINATION OF STEPHEN STERN

BY DR. KAYSER:

Q Mr. Stern, on -- from the email of July that I sent to you on July 20th, did that form the basis for the remainder of our negotiations?

MR. KRACHT: Objection. Do you have an exhibit you can refer to, please?

DR. KAYSER: It's our Exhibit 1, and I

believe it was your Exhibit --

MR. STERN: Looking at Exhibit A, what is Page 6 of the -- is that the one you're referring to?

BY DR. KAYSER:

Q Yeah.

A I don't know if I'd describe it as it forms the basis of our subsequent negotiations, because I responded by rejecting that email, and then I think really where -- if you wanted to talk about one that really forms the basis of it, you could maybe point to either the July 23rd email from Mr. Earley, or the July 25th email from Mr. Earley, where those -- some of the charts were there, and that set forth the terms.

Q Would you read the top to the first line of that email to me?

A Which email are you referring to?

Q The July 20th email, Exhibit 1 or Exhibit A.

A So the first line says, "Stephen, as time is very short, you should consider this as our final offer. If your client agrees to these terms, we will send a letter to the Judge, indicating we have reached an agreement. This entire transaction must be completed, including the transfer of funds, in time to cancel the trial." That's the opening paragraph I just read.

Q Doesn't that statement presume that our position was, this is our final offer?
A It does say it was the final offer, but obviously it wasn't.
Q Did we subsequently agree to renegotiate the payment schedule?
A I don't know about renegotiate. That suggests that there was an agreement in place and then we're modifying it.
Q In your response to this document -- let me find the right response. Can you give me -- in the response to that, in Exhibit -- same exhibit. Okay. Page 5 of Exhibit A.
A So my response --
Q The only objection you state in here is an objection to the cash amount and to the payments -- actually, to the payment schedule.
A That's not correct. The opening paragraph of my response on July 23rd is two sentences. My opening sentence says, "I'm in receipt of your demand to resolve the litigation involving Tagnetics." Second sentence says, "While I and the Tagnetics team appreciate the overture to try to reach a negotiated resolution, the demand you put forward is not realistic."

Q And the next statement is, the next sentence?
A Yeah, and I go into some of the discussion, but I -- I didn't qualify --
Q The only thing discussed in this email is the amount of cash, not the terms and conditions. Why didn't you include any argument about the terms and conditions?
A That is not correct. If you look at the email further down, there is a discussion about the default judgment, so it's not only about monetary terms. I remember that was one of the discussions that we were having. So it's not limited only to monetary terms. And as the final email on July 26 reflected, there were non-monetary terms addressed in that.
Q Can I ask you about your use of the word carve-out? That doesn't seem to be -- is that a good legal word to use?
A Well, it was -- I don't know how to really answer that. Let me try my best. So it says, the phrase that we're using on the 26th says, "full mutual releases, no carve-outs." No exceptions would be another way of saying it.
Q What's the definition of the word carve-out?
A I would describe it as an exception to whatever is agreed upon in terms of whatever the scope of the

agreement is. In this case, we're talking about releases.

Q Is it a good legal word? I'm just asking you whether, as a lawyer, do you think that carve-out is a clear word to use, without knowing what the context in which carve-out is used?

A I've used that phrase before. Other lawyers have used that phrase before. It's not the first time by any stretch in the course of my career, and the phrase "carve-out," at least referencing July 26th as the point it follows -- I'm reading from my email at 3:27 p.m., which is on Exhibit A. Full mutual releases, parens, no carve-outs, so meaning no exceptions to the mutual releases.

Q But you're adding a context to it, and is carve-out a word that's defined by context?

A I think every word requires an examination of context.

Q Have you ever looked carve-out up in a dictionary?

A I have not.

Q Then I can't ask you what it says. But carve-out -- I can't testify here.

One last question. In the settlement agreement you sent us on August 14th, why did you mention Ron

Earley's loan in the section on Ron Earley, if you had dismissed all of these terms?

A I know it was referenced at one point and we limited to the monetary terms, as the chart reflects on Mr. Earley's 25th email, and then again on Exhibit I, the email that was sent by Mr. Hager, showing the entirety of the monetary terms. And I was just reiterating that that loan is not part of this, because it says, "total settlement." There's no other monetary payments to be made.

Q Exhibit --

A It is not unusual in my experience, at least the way I draft agreements, when there is some discussion of some point about maybe some other side term, whatever the case may be, or some other agreement that's out there, I like to make sure when there's a release, we're enunciating the entire list of things, to make sure that there's no argument later on --

Q So you --

A -- that I didn't include that or wasn't clear.

Q So in your -- it was mentioned in the settlement agreement that you were wiping out Ron's loan; is that how you would characterize it?

A I'd have to look back to the settlement agreement that I drafted that I have a recollection of

including some references to other agreements.
Q If you did that with Ron Earley's loan, why didn't you do it with the other outside-the-contract dollar amounts that -- for instance, the Kayser Ventures, Core Technology license and also the other -- the deferred salary that was to be excluded in our document?
A Well, that's not accurate either, because if you look at your release and this language is mirrored in Mr. Earley's release and it is mirrored in Mr. Hager's release. I'm looking at Page 3 of Exhibit B. I don't want to reread the entire paragraph, but I go through an illustrative list of examples, whether known or unknown, by statute, contract or otherwise, including but not limited to any claims for -- so I'm now articulating the various types of claims you or any of your colleagues may bring against Tagnetics. Unpaid wages, Romanette one. Romanette two, unpaid notes or other loans, including unpaid interest.
Q All right. I have no other questions.
A Romanette three, unpaid dividends. I think it's important that I complete my testimony here. Profits or other distributions. Romanette four, unpaid royalties. Romanette five, breach of contract regarding goods or services provided or rendered, or

equipment loaned to Tagnetics. Romanette six, breach of express or implied contract or unjust enrichment.

DR. KAYSER: Your Honor --

MR. STERN: Romanette seven --

DR. KAYSER: -- I'm done questioning.

THE COURT: Okay.

MR. STERN: I'm just answering the question that was asked.

THE COURT: I understand. Yeah, and you're referring to the draft settlement agreement, and I think we can read the rest of that.

MR. STERN: Okay. They are a list of illustrative types of claims.

THE COURT: You made your point in response to his question. No further questions of Mr. Stern?

DR. KAYSER: You guys? Jon?

THE COURT: Mr. Kayser, you have no further questions?

DR. KAYSER: Yes. No further questions.

THE COURT: Okay, thank you. Mr. Earley, do you have any?

MR. EARLEY: No, I have no questions.

THE COURT: And if I don't state it, if they -- the way I will phrase it is you can -- if Mr. Kayser has asked questions, you don't need to ask the same

questions. If there is additional testimony which you wish to elicit in your case, you may do so, but you don't have to re-elicit any testimony or evidence that's already been introduced. But that -- and that's going to run through, throughout the day today. That's going to be the rule. You don't need to re-elicit testimony or evidence that's already been elicited in anybody's else's case. So with that caveat, anything additional you wish, Mr. Earley, to cross-examine Mr. Stern on?

MR. EARLEY: No, sir.

THE COURT: Okay, thank you. Same thing, Mr. Hager, any additional --

MR. HAGER: I do have some questions.

THE COURT: Yes, you may.

MR. HAGER: And I'm not revisiting the same issue, but it is the same word, but only for a reason.

THE COURT: That's fine.

BY MR. HAGER:

Q So Mr. Stern, who introduced the word "carve-out" on our phone call at I believe it was 12:44 on July 26, that phone call that was between Mr. Earley, Mr. Kayser, myself and you?

A I don't remember who brought that up. It would be speculation, based on my general recollection of

discussions, but I have no specific recollection of that.

Q Do you remember specifically what the topic that we were discussing, that we had disagreement about, that led to actually you stating, okay, then no carve-outs?

A I'll assume for the moment, based on your question, that I was the one that brought up the phrase carve-outs. But regardless, what I do remember about the discussion about release was that I think it was Mr. Earley who was pushing for the notion -- maybe Mr. Kayser or you. I don't remember who it was. I think it was Mr. Earley, was saying we need full releases, referring to these other agreements that were in place, because you didn't want to be -- you didn't want Tagnetics to be able to sue on any -- on any intellectual property rights, anything related to the employment agreement. You wanted complete freedom from Tagnetics, and I had expressed some concern about that at some point, so I said nevertheless, I'm duty-bound to discuss this with my client, and I will do so.

I did bring it up with Tagnetics, and I did report back, to my surprise, that Tagnetics did -- was willing to agree to the full releases you requested, provided it was mutual, meaning no carve-outs, full

mutual releases, and that's my general recollection of how that conversation occurred.

MR. HAGER: I don't know if I can clarify that conversation now, or do I need to do it later?

THE COURT: I mean, do you want to ask Mr. Stern any more questions about that conversation or are you saying you want to testify as to your recollection of that conversation?

MR. HAGER: I guess I could ask a question, maybe get the same --

THE COURT: You can ask him more questions.

BY MR. HAGER:

Q Did you request that Tagnetics reserve the right to have essentially a carve-out, or to reserve the right to be able to come back and sue the Petitioning Creditors in that phone call?

A Well, one of the things I did explain -- I understand now -- I think I know what you're talking about. At one point, when I expressed my initial concern about giving the full mutual release to you and Mr. Earley and Mr. Kayser, was that since there was reference to some intellectual property issues, maybe theft of trade secrets -- I may have probably given as an example -- that's one I often use as an example, I said I don't know if I could recommend that Tagnetics

agree to this, because I don't know what you guys have taken or not taken.

So I said, I will nevertheless discuss it with the client, but the client was willing to agree to that, again, provided that it's mutual and there were no carve-outs, which is what you were asking for yourselves and I remember then saying it's going to be mutual, and it will be all the way around, for all parties involved.

Q So was this specific discussion that you wanted to -- you requested the reservation of Tagnetics to be able to come back and prosecute us, if you will, at some later date, and we disagreed with that --

A Right, and then I eventually said --

Q -- request specifically?

A And then I eventually said that there is no reservation, it's full mutual releases, no carve-outs, so meaning you got the release you wanted.

Q But in the context of that discussion, to the point of carve-outs in context, as you alluded is proper, were we discussing our disagreement with Tagnetics, reserving the right to come back and prosecute us about our employment agreements, participation in the Board, all the same points that had been raised in the original July 20th proposal?

A I don't know if it was in the context of the July 20th proposal. That I don't -- I don't recall that being the case. But again, you did express some concerns, that is correct, about what Tagnetics may come back after you on, and I had some concerns about that. Nevertheless, I reported back to Tagnetics, had a conversation with Tagnetics about it. Tagnetics ultimately agreed to the concession you wanted Tagnetics to make, which was the full release of the three of you, and in return there would be a full mutual release of Tagnetics, as well, which is what is on that term sheet on July 26th, as exactly as we discussed. That phrase is something that we discussed and made sure that that was part of the discussion. It wasn't just one-sided. It was both.

Q The other question I guess I have for you is in your final emails on the 26th, as we call the flurry of emails trying to get to the deadline, which would have postponed the trial, did you label any of those emails as this is a term sheet?

A No, I did not. I just --

Q You have been referring to it as a term sheet, which I understand -- my experience with term sheets and raising funds years ago for Tagnetics was, you know, it's specifically calling everything out, but in

those emails you refer to them as key terms.
A Yes.
Q Which would key terms allude to the fact that that's a portion of the agreement? There are key terms to an agreement and there are other terms to an agreement?
A Well, there are material terms and there are other terms, as written in the draft settlement agreement, that as far as I could tell, there weren't any objections to, for example, some of the other terms in the settlement agreement. The Section 18 about waiver, Section 17 about prevailing party status. Now, that was in the July 26th email, but those are pretty common types of terms in settlement agreements that I've entered into. And as I referred to in the email on the 27th, saying that these are the key terms, but I said we have an agreement in place that will be documented more thoroughly in a settlement agreement. Referring to that they will be more elaborated on in a written agreement, which is what I provided to the three of you on August 17th. I'm bad with dates, so I have to think about that.
Q So going back to your response to the July 20th proposal, you responded July 23rd. Did you specifically address or specifically state that the

items listed as other items needing to be in the settlement, did you specifically say those were rejected?

A I'm sorry, can you ask the question again?

Q Sorry, trying to read my notes on the fly here. So when you responded to Mr. Kayser's proposal of the 20th, did you specifically reject any of the terms below, any of our requested terms that were below the cash payment schedule at the top? Did you specifically say those other items are no longer being considered, or are not to be considered?

A I think the -- what I did write was your demand put forward is not realistic.

Q Which is that -- that's a fairly general statement, right?

A It is, but it refers to the entirety of the demand.

Q But it would beg the next statement to be clarification of what you disagree with, correct?

A Well, I disagreed with the entirety of the demand.

Q I mean, if I said the weather was terrible outside, you'd say well, what's terrible about it? Right?

A Not necessarily.

Q So, yeah, so I can't testify, so I can't go much further. But so did you specifically talk about in Paragraph 2 the shortness of funds or the lack of funds, if you will, of Tagnetics, at this point in time, being able to make a payment at this point in time?

A That's one of the things I discussed, but I also discussed the concept of the default judgment that was being discussed, which is not a monetary term. So it wasn't limited only to the money that -- we were not discussing only money in that email.

Q But was there any reference to the KBL Core agreement, the loan for Mr. Earley or --

A No.

Q So nothing for us to believe that you had rejected those items that were being proposed on the July 20 --

A Well, I don't know how else to interpret "The demand you put forth is not realistic." That's rejection of the term. Now, furthermore, your response -- in fact, it was Mr. Earley, "Here's our offer, after your email this morning. Let us know if there's any interest." It doesn't refer to any other terms. And then after that the next email I got was -- or another email where, again, there was no monetary terms

involved, but it was from Mr. Earley, on July 25th at 1:25 p.m., it says, "Here is my counter proposal." And no other terms other than monetary terms in there. What other non-monetary terms am I supposed to be interpreting into that counter proposal on July 25th? I don't know. There's no incorporation to the July 20th email, no reference made to terms in the July 20th email, and there were two or three counter -- two counter proposals, if I'm doing my math correctly, that didn't refer to any other non-monetary terms between now -- the July 20th -- and at least I'm looking at July 25th. And again, the -- not once, not twice, but three times in the confirmation emails on July 26th, there were no other non-monetary terms included in the emails from any of you.

In fact, the email from you on -- at 4:36, Exhibit I, just to make sure there's no confusion. Now, granted, that's the payment schedule, but if there is some other non-monetary terms that I'm supposed to be considering, I didn't see that in any of those three emails.

Q I just want to point out on that schedule, I was correcting a typo, so on one of the charts that was sent under my name, the first item was 300.

A I saw that. But you also added --

Q There were three zeros, so I went ahead and just --
A I saw it, but you also added "total" in capitals. I mean --
Q I do spreadsheets every day and so I always do "total" in capitals so I can see it. I didn't want to read a lot into that total, but that's beside the point. Did you get an email from me on July 30th?
A I don't know.
Q It's in our Exhibit 5, which I can pull out.
A I don't know --
MR. KRACHT: Objection.
MR. STERN: -- if it was sent to me.
MR. KRACHT: It's outside the scope. It's outside the scope, Your Honor.
THE COURT: Any response to the objection, Mr. Hager? Basically what he's saying is your question is outside the scope of his -- what he testified to on direct examination. It's beyond what he testified to on --
MR. HAGER: I guess I'm trying to make the point that in his statements earlier he said that we were making new claims, that we had buyer's remorse, if I remember your phrasing, and we were introducing new monetary demands at that later date. Is that correct,

you said --

MR. STERN: Yes, as just what I testified to, I would say that's a fair description.

MR. HAGER: And so I was trying to make the point that on that Tuesday, which was the day after the weekend that we were expecting to see some kind of draft agreement --

THE COURT: Not -- we're kind of getting into testimony.

MR. HAGER: I'm sorry. I can cover that later.

THE COURT: Now, if you have that -- if you have that exhibit and you want to present it to Mr. Stern and ask him if he received that, you may do that. That's certainly, I think, well within the scope of cross-examination, if it relates to his direct testimony. So to that extent, I'm going to overrule your objection, Mr. Kracht.

MR. HAGER: I apologize for muddling through this. I'll do my best.

BY MR. HAGER:

Q So this is the email that was sent on -- let's see if I can show this -- Tuesday, July 30th, at 9:33 a.m.

A Can you just do me a favor and put the entirety

of that first page on, so I can see the full string? Like, does this --

Q Well, the header, this is just wrapped on to another page. So that was the table on this as a follow-up.

THE COURT: Do you have a hard copy you can present to --

MR. KRACHT: And what exhibit is this?

MR. HAGER: This is part of our Exhibit 5.

THE COURT: Does somebody have a hard copy for the witness?

MR. HAGER: Is this for you, Your Honor?

THE COURT: We will need copies of any exhibits you seek to introduce.

BY MR. HAGER:

Q This is still a part of that thick Exhibit 5, which was all the emails.

THE COURT: Okay. Mr. Kracht, do you have that?

MR. KRACHT: Exhibit 5, correct?

THE COURT: Yeah. I just want to make sure you have that.

MR. KRACHT: I don't believe there are exhibit stickers, but they appear to -- did you identify your exhibits like at the top of a document?

MR. HAGER: Yes, at the first page it was identified, yes. So it follows the last table here. July 30th --

MR. KRACHT: This is still part of Exhibit 5?

THE COURT: If you have the files, the exhibit -- proposed exhibits they filed in Document 112-5, it would be 112-5, Page 1 of 24.

MR. KRACHT: For some reason, Your Honor, I don't have that in what I printed from what they filed electronically. I've got 3, 4 and I'm not running into that page of Exhibit 5 for some reason.

THE COURT: What page of Exhibit 5 is that you have on the document camera, Mr. Hager?

MR. HAGER: Looks like Page 16 in this copy.

MR. KRACHT: I'm going off of, Your Honor, the exhibits that are time stamped, based on what they filed with the Court. And what -- he's referring to a document that has no court filing marks of any sort, so I think there's some problem, unless I missed it, and I apologize, if I did.

MR. HAGER: Right here, this is where it starts. It's this, understood from Joni Behnken's email and then, unfortunately, your printout, you ran out of ink. That's the discussion. I'll try to make it quick.

MR. KRACHT: Looks like we have it but there's some copying issues from what we got off the Court file.

THE COURT: Yeah, I'm not sure -- Mr. Hager, I'm not sure when you filed these or whoever filed these with the Court, that in the process, that it all got copied and into the system.

MR. HAGER: He has the document. It's just the printout is faded.

MR. KRACHT: You can't read it.

MR. HAGER: Ran out of ink or something.

MR. KRACHT: I don't think it's on our end. I think it's -- I mean, I guess we could look at what the Court shows as well, but the document he's referring to, the text on the next page after that is virtually illegible for several pages actually.

THE COURT: Yeah. I think there was a problem --

MR. KRACHT: How it was scanned when it was fed in.

THE COURT: Yeah, because what I'm looking at in the court file exhibits does look significantly different from what's on the monitor.

MR. HAGER: Can I approach, Your Honor, just show you what we have?

THE COURT: Absolutely, yeah.

THE CLERK: It is listed under 6, but it is not legible. It appears to be a scanning issue. Your Honor, if we took a recess I could probably retrieve it from the Clerk's office.

THE COURT: Yeah, why don't we take a short recess to do that? The Court is going to take a short recess to retrieve the document from the Clerk's office.

THE CLERK: Court is in recess.

(Off the record from 11:50 a.m. until 12:06 p.m.)

THE CLERK: Court is again in session. You may be seated.

THE COURT: Okay. We left off with Mr. Hager trying to cross-examine Mr. Stern on what was part of -- an email that was part of, I believe, the Petitioning Creditors' Exhibit 5, and there was I think a scanning problem or issue with the Petitioning Creditors' exhibits at the Court, but I believe, Mr. Kracht, that they did email these exhibits to you; is that correct?

MR. KRACHT: I wasn't able to confirm that, Your Honor, and it's very possible that that occurred. I don't want to say that they weren't.

MR. HAGER: We did.

THE COURT: Okay. Mr. Hager says they were emailed to you. Is there any objection at this point as to Mr. Hager's examining Mr. Stern on that -- was that a July 30th? Is that right?

MR. HAGER: That's correct.

THE COURT: Email?

MR. KRACHT: I have that right now. And no.

THE COURT: All right. You may proceed, Mr. Hager. Thank you.

BY MR. HAGER:

Q So this email here, I want to know if you had received it on July 30th?

A I have no specific recollection that I did, but I have no basis of saying that I did not.

Q So then whether you can answer or not, whether you read the attachment that was attached to that email?

A I have no recollection one way or the other. I'm not saying that it wasn't sent to me. I don't specifically recall doing it.

Q Can you see in this attachment the --

A You have to pull it up a little bit for me to see the entirety of it. Now I can.

Q There you go. And that's -- there's a whole other page, but anyway, as it's written here -- I guess

I can put the whole thing -- basically this attachment looked very similar to the original proposal on July 20th.

A I don't know. I'd have to do a comparison, but in my mind, even if it did, it doesn't matter, because that wasn't part of what we agreed to on July 26th. I remember -- what I do remember, after we reached agreement on the 26th, there were some emails back and forth, and admittedly, I didn't pay close attention. I had just gotten back from vacation. I'm trying to get up to speed. We had the agreement in place. My sole focus was to comply with the Court's directive to get the agreed order in place, and then work on the settlement agreement afterwards.

So I remember there's some emails that I received from one or some combination of you guys, but I have no recollection of what the specifics were and I didn't -- I remember, whatever I saw, I didn't really pay close attention to.

Q Okay. So you don't think you read this email then?

A I may have, but if I did I didn't really process it. I would say I may have taken a quick skim through, but it wasn't something I was planning on paying attention to, reading carefully or paying close

attention to. We had the agreement in place. I was worried about the agreed order, as far as this case was concerned. That was my focus, that I remember being the case.

Q So when you received our concerns about the draft agreement, did you say that we had added new terms?

A I remember having those discussions or that, you know, exchange, after I sent the draft agreement. I have no recollection of doing that beforehand.

Q But in your testimony didn't you say we had added new terms, things that were never discussed?

A Yes, and even based on that email there, assuming that's what was sent, I would still say those are new terms from what we discussed, because the agreement on the 26th didn't reflect those terms. And as you may recall from the email strings at one point, you cut off or it wasn't you specifically, Mr. Earley said, cut off discussions, saying no chance, see you in court. Then I asked for a counter proposal and, again, there were counter proposals, but no reference to any of these other terms.

MR. HAGER: So -- I don't think I can say that. I guess I'll cover that in my -- in our examination later or witness testimony. Okay. I have

nothing further right now.

THE COURT: Thank you, Mr. Hager. Any redirect examination, Mr. Kracht? You may proceed.

REDIRECT EXAMINATION OF STEPHEN STERN

BY MR. KRACHT:

Q Directing your attention to Tagnetics Exhibit A, Page 3.

A Mm-hmm.

Q It's the email at the bottom of that page from Mr. Earley to you, dated July 24th at 7:43; is that what you were referring to, where they cut off all discussions, terminated any discussions?

A Yes, that's what I interpreted their response to be. And, in fact, if you look at my email above that, my email on the 25th at 12:42 p.m., it's exactly the phrasing I used. It seems silly, and quite frankly odd, to simply cut off negotiations. I thought we were done. Whatever transpired is over, and I'm trying to revive discussions at that point, asking for a counteroffer.

Q And you're starting anew from that point?

A That's the way I thought.

MR. KRACHT: Okay. Nothing further.

THE COURT: Thank you, Mr. Kracht. Any recross-examination of Mr. Stern, Mr. Kayser?

DR. KAYSER: No.

THE COURT: Mr. Earley?

MR. EARLEY: No.

THE COURT: Mr. Hager?

MR. HAGER: No.

THE COURT: Okay. I've got a couple quick questions, Mr. Stern, and then everybody is willing to ask any additional questions based upon my questions. There are just two questions. One, the payment schedule refers to a liquidity event. What would you -- what's your understanding as to what liquidity event means?

MR. STERN: We never discussed those details. So when I put together the draft agreement, Your Honor, there is a provision in the agreement, Section 2 on Page 2 of Exhibit B, that -- where I provided a definition of a liquidity event. And my recollection from the objections and concerns that I received from the alleged Creditors, no one really objected to that definition that I included. It is a similar definition -- I've written many agreements in my career. This doesn't come directly from another one, but it adopts concepts that I've used before in other agreements, and I wanted to make it as, you know, consistent with what we were -- you know thinking of as what would be a

liquidity event and what would be an accurate and fair description of that, and I think that's captured in Section 2.

THE COURT: Okay, thank you. Well, that answers that question for me. I'm assuming then from what you just testified, that your definition of liquidity event, what was intended, in your understanding of liquidity event, in that schedule, was what you have in Paragraph 2 of your draft settlement agreement?

MR. STERN: Yes. This is what I wanted to use as the definition, and I think it fairly and accurately describes the types of liquidity events that would be potentially in play for Tagnetics. And so to -- I remember that was one of the conditions that they wanted, they being the alleged Creditors, wanted for the -- on the payment schedule for a certain event to occur. And I tried to -- my best to capture what the concept was. Granted, there were no details -- to be fair, there were no details that were discussed between us as to what would constitute a liquidity event. It was just a phrase that was used, and I tried to put reasonable meat on the bones to fairly and accurately describe what that might be, to capture that event, if it were to occur.

THE COURT: Thank you. The second question or area is some or all of the Petitioning Creditors, I understand, I believe still have stock or equity interest in Tagnetics. From the July 26, if there was a July 26th settlement, what's your position as to the impact of that settlement agreement on the stock or equity interest?

MR. STERN: That is a fair question that I don't think is really captured in the agreement. The -- we didn't ask for them to relinquish their stock certificates, because that wasn't part of the discussion, but it was to relinquish any rights that the release does capture, the relinquishment of any rights they might have had vis-a-vis those -- whether it be payment of profits, dividends or anything prior to that date, I think is certainly captured in the essence of full mutual releases, no carve-outs. But in terms of what they had to do with their stock certificates was not covered.

THE COURT: Thank you. Those are the only questions the Court had for Mr. Stern. Any questions based upon my questions, Mr. Kracht, for Mr. Stern?

MR. KRACHT: No, Your Honor.

THE COURT: Okay.

MR. STERN: May I step down, Your Honor?

THE COURT: Hold on. Mr. Kayser, any questions for Mr. Stern, based upon the questions I just asked?

DR. KAYSER: No.

THE COURT: No? Mr. Earley?

MR. EARLEY: No.

THE COURT: Mr. Hager?

MR. HAGER: No, sir.

THE COURT: Thank you. Mr. Stern, you may be excused.

MR. STERN: Thank you. It's been interesting sitting on this side of the microphone.

THE COURT: It is different. I have been -- was there as an attorney years ago, and I agree, it is a much different experience being on the other side.

Okay. Mr. Kracht or Mr. Stern, any other witnesses you wish to call in Tagnetics' case?

MR. KRACHT: No, Your Honor.

THE COURT: Any other evidence then you wish to introduce? We've admitted all your exhibits except E. We've got Mr. Stern's testimony. Any other evidence you wish to introduce?

MR. KRACHT: Nothing further, Your Honor.

THE COURT: Okay, thank you. What time is it?

THE CLERK: It's 12:17, Your Honor.

THE COURT: 12:17. I think we -- now would probably be a good time to break for lunch. As my wife would let all of you know, it's in your all best interest to let the Court take a lunch break. Whoever came up with that Snickers' commercial with the prima donnas in the Snickers' commercial, I think must have known me. At least my wife would say they knew me. So I hopefully will be much better behaved after getting some nourishment and taking a short break for that. So why don't we do that now. But I'll leave it up to you how long you think we -- you wish, because I know all of you probably have flights and so forth you need to catch, so the -- taking a lunch break is not negotiable, but the length of the lunch break is negotiable.

MR. STERN: Your Honor, to the point about leaving, I booked my flight as late as possible today. It's out of Cincinnati. The latest I could fly out of Dayton was like 2:30, and I thought that might be a problem, but I probably have to be on the road back to Cincinnati -- I realize we do have to get through this hearing, probably by about 3:00, to catch my flight, to make sure I return the car on time and everything.

THE COURT: Okay.

MR. STERN: I think we should be able to finish in that time, but I want the Court to be aware, so we can plan accordingly.

THE COURT: Yeah.

DR. KAYSER: Excuse me. What time is your flight out of Cincinnati?

MR. STERN: 5:20. And it's about an hour and 15 minutes --

DR. KAYSER: We'll do our best to be brief.

THE COURT: Okay.

MR. STERN: I don't know how much time you guys were going to use, but --

DR. KAYSER: I think we'll be brief.

MR. STERN: So we should be on track then.

THE COURT: Why don't we plan on being here back in 30 minutes? We can for sure getting started by one o'clock, and then Ms. Behnken can -- and court personnel can guide you to different places you can go. Thank you.

THE CLERK: All rise.

(Lunch break from 12:20 p.m. until 1:03 p.m.)

THE CLERK: Court is again in session. You may be seated.

THE COURT: Okay. Before we took an adjournment for lunch, Tagnetics rested its case and we

are now, I believe, prepared for the Petitioning Creditors' cases. Mr. Kayser, or do one of you -- it doesn't have to be Mr. Kayser. Who wishes to proceed with their case first?

DR. KAYSER: Your Honor, I will take the witness stand and present a narrative.

THE COURT: You may do so.

THE CLERK: I just remind you, sir, you're still under oath.

DR. KAYSER: Understood.

DIRECT TESTIMONY OF KENNETH KAYSER

DR. KAYSER: Let me start at the beginning, a brief introduction of who I am. I got my Ph.D. from Purdue University in 1973. I was -- after that became an assistant professor at Purdue, Director of the Center for Applied Stochastics and a Professor in the Department of Aeronautics and Astronautics

I also was the founder of Tagnetics' predecessor 20-some years ago. I was the name on the patents for the technology. And ultimately that company was sold to Hobart and then re-acquired and went forward under another name, was reorganized one other time, to become Tagnetics. Ron Earley was the president of that company. I was the chairman and I have been a director of this company throughout the

history of the company.

As of the beginning of this year, I resigned as a director, with the express statement that we would take legal action against the company, if the issues concerning our contracts, among other issues with creditors, were not resolved quickly.

Three months later we filed the petition, and that's how we got to where we are today.

On July 19th we received a request from Mr. Stern to make a proposal to settle this. The three of us sat down or by phone conference agreed on what the terms of that settlement proposal should be, and that's expressed in my July 20th email. We agreed going into this those were our terms.

A couple days after I sent that email, we got a response from Mr. Stern, which has been introduced into evidence previously, requesting a change in the payout schedule, but not disputing the total amount we agreed to settle for, which was, incidentally, approximately 40 percent, which we thought was contractually due to us.

I wasn't particularly in favor of doing a settlement at all, given my history of asking for a settlement previously, but I agreed to go along with the other two petitioners, as they had been long-time

employees of our company, and I wanted us all to be more or less on the same page.

The terms of that July 20th letter, as far as we knew, were never disputed except for the time table on the payment of the funds. I was not involved in the negotiation, because I had agreed that I would -- it would be up to the other two guys to determine what that payout was to us.

When we first got the request to renegotiate the payout terms, the three of us once again had a conference call to agree and what we agreed to do was allow Ron Earley to renegotiate the terms of that payout. We also agreed that the other terms were in inviolate. And we did not authorize Ron -- Mr. Earley, nor did we expect there to be any renegotiation of those terms.

We talked often over the next several days, during the craziness of many conversations back and forth concerning the amount. In general, I didn't have any significant input into that, other than to stress in every conversation that the terms and conditions, which we had outlined on July 20th, must be included in any settlement agreement.

On Friday, a few hours before I guess around 3:00 or 3:30, I did hear that they had reached an

agreement on the payout schedule, and both Ron Earley and Jon Hager confirmed to me that they had not renegotiated any other term, nor were they brought up. And when Joni called me at 5:30 that evening, or not evening, five o'clock -- I'm not sure of the exact time Joni called, but it was later than I expected her to be here, I told her that I had agreed to go along with whatever Mr. Earley and Mr. Hager had agreed to. She told me that they had both sent a note to the Court. I don't recall exactly how that was sent.

So I agreed to go ahead and cancel the trial at that time, given the assurances I had received from both Mr. Earley and Mr. Hager that the terms had not been discussed, and had not been agreed to, any changes in those terms and conditions.

When I finally got a chance to read the email that Mr. Stern had sent to me at 3:30 on Friday -- I had been out doing some things. I don't even recall what errands I was running, but I wasn't able to see the email until 5:30. It said two things of significance to me.

One is it had this vague term of carve-outs. Carve-out is a word, when I -- I wasn't very happy with what I got back from him. Being a lawyer, I expected there to be more clarity in what he sent back, rather

than less. I Googled carve-out, looking for the definition of carve-out, because I wanted to understand what he was trying to say. And basically there is no specific definition of carve-out. It's entirely a definition due to context.

And while from our perspective, all three of us and mine, our perspective was that we were negotiating from the July 20th document. And I understood why both Mr. Hager and Mr. Earley would have interpreted no carve-outs as meaning no changes to our provision, other than the payment schedule, which was being negotiated.

However, in that 3:30 email on Friday from Mr. Stern, he also committed to getting a draft of the settlement agreement over the weekend done. When we did not receive that settlement agreement on Monday, the three of us had another conference call, and said, you know, there's been no clear restatement of the terms of the settlement we had agreed to.

As a result of receiving no communication from Mr. Stern on Monday, the three of us selected Jon Hager to write a response, reiterating the terms which we had agreed to. That was sent on Tuesday. I don't know the date.

The Judge, Your Honor, you had ordered that

there be, I believe, two weeks from the Friday for us to get an agreed order. We did not hear from Mr. Stern. We saw an agreed order, which he said we had to sign. We didn't believe we had a clear agreement. We refused to sign that agreement. We later received the draft agreement, which he had sent, which we didn't agree to and we didn't -- we never signed an agreed order, because we did not have an agreement.

We consequently had another conference call with Your Honor, and -- excuse me for a second. I have to think about the time line. I'm old. I can't see well and I don't hear well, so it takes me a while to look at this stuff.

We had another conference call with you to discuss -- during which you set a new deadline for when we needed to have the agreement put together by. We did not have the agreement together by then, and there was no negotiation. There were very large gaps which, frankly, I can't testify to. I'm sure that Mr. Hager will testify to the time line of the gaps, when we never heard -- we repeatedly reiterated the terms and conditions under which we were willing to settle. We never saw any edit to the draft agreement concerning -- we had no conversation with working out our differences.